



January 28, 2011

Ms. Terry Macaulay
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, California 95814

VIA E-MAIL
deltaplanscoping@deltacouncil.ca.gov

Re: Comments on Delta Plan EIR Notice of Preparation

Dear Ms. Macaulay:

The Northern California Water Association (NCWA) and the Regional Water Authority (RWA) appreciate the opportunity to comment on the Delta Stewardship Council's (Council) notice of preparation (NOP) of a draft environmental impact report (EIR) for the Delta Plan. We previously provided comments on November 3, 2010 to the draft NOP. We want to reiterate our comments that "the NOP should not describe a planning area that extends beyond the Delta" and the "NOP improperly identifies local agencies as responsible agencies."

Moreover, the NOP shows an intent by the Council to exceed its statutory authority in several areas as described below. CEQA does not expand a public agency's authority. In light of the intricate balance that the Legislature struck in enacting the 2009 comprehensive water legislation, any actions proposed by the Council that extend beyond the Delta will likely conflict with some part of the 2009 legislation and therefore with CEQA's clear limit that "a public agency may exercise only those express or implied powers provided by other than [CEQA]." (Public Resources Code § 21004.) We strongly urge the Council to re-focus on its clear authorities in developing a Delta Plan for the Delta. With respect to its EIR, the Council must analyze the extent to which any measures proposed in the Delta Plan would reduce regional self-reliance of the Sacramento Valley hydrologic region and would adversely affect environmental resources that depend on water uses in those areas.

NCWA and RWA

NCWA is an association of water suppliers throughout the Sacramento Valley, whose diversions supply over 1,000,000 acres of farms and much of the habitat for birds using the Pacific Flyway. NCWA is committed to advance the economic, social, and environmental sustainability of the Sacramento Valley by enhancing and preserving its water rights, supplies, and water quality for the rich mosaic of farmlands, cities and rural communities, refuges and managed wetlands, and meandering rivers that support fisheries and wildlife. NCWA's members also have partnered with various entities outside the region to provide water during critical times.

RWA is a joint powers authority that serves and represents 21 water suppliers in the greater Sacramento region, including portions of Sacramento, Placer, El Dorado and Yolo Counties. RWA's members supply water to nearly two million people in the Sacramento region. Members

of RWA have assisted water-short regions of the state and the Environmental Water Account by transferring water to them in dry years. RWA members negotiated and signed, in 2000, the historic Sacramento Water Forum Agreement, which balanced the coequal objectives of reliable water supplies and protection of the lower American River.

The Delta Plan Must Maintain This Region's Self-Reliance

The NOP appropriately acknowledges that, in the 2009 Delta Reform Act that created the Council, the Legislature emphasized, as state policy, the enhancement of regional self-reliance around the state. The Sacramento Valley and the Sacramento metropolitan area comprise one of the few regions of the state that is self-reliant in its water supplies. This region in fact must be self-reliant because it is generally not feasible to import additional supplies here.

In developing the alternatives in the Delta Plan EIR, the Council accordingly must analyze any environmental impacts that would occur with the implementation of any measure that would reduce this region's ability to rely on its own water sources to meet its demands. These impacts would include indirect impacts that would result from the direct social and economic impacts. Those indirect impacts would include:

- Inducement of growth in other regions of the state and the associated increased demand for sensitive habitats, increased traffic congestion, increased air pollution and increased greenhouse gas emissions in those regions;
- Increased groundwater pumping, which could lead to overdrafts in basins that are currently in balance due to the use of surface water;
- Reduced habitat for waterfowl and birds along the Pacific Flyway;
- Reduced habitat for giant garter snakes;
- Reduced groundwater recharge from the application of surface water; and
- Reduced recreational opportunities for residents and non-residents of this region.

An analysis of the Delta Plan's effect on this region's ability to rely on its own water supplies also is necessary to ensure that the Delta Plan does not propose measures whose implementation would violate California's area-of-origin laws. (See Water Code §§ 1215-1222, 10505, 10505.5, 11128, 11460-11463, 12200-12220.)

Impacts of Specific Measures Identified In Delta Plan EIR NOP

The NOP contains a number of specific proposals that could have the above-referenced impacts if applied in this region, as well as other impacts. All of these impacts are discussed in more detail below.

Heightened water conservation. The NOP proposes that the Delta Plan include statewide agricultural and urban water conservation requirements that would be more stringent than those

enacted by the Legislature in 2009's SBX7 7. (NOP, pp. 17-18.) As an initial matter, NCWA and RWA believe that including such measures in the Delta Plan would contravene the Legislature's intent in enacting the Delta Reform Act as part of a double-joined package with SBX7 7. SBX7 7's provisions were negotiated in extreme detail among the interested parties and, to the extent SBX7 7 delegates authority to develop further conservation measures to administrative agencies, it delegates that authority to agencies other than the Delta Stewardship Council. In this context, the Delta Reform Act's spare reference to the Council having authority to "promote statewide water conservation" cannot be taken as enabling the Council to adopt and impose new or additional conservation measures on water users. To the extent that the Council nonetheless decides to include heightened conservation standards in any Delta Plan alternative analyzed in the Council's EIR, that EIR must:

- Analyze the impacts identified in the preceding section of this letter because such heightened conservation measures would reduce this self-reliant region's ability to use its local water sources;
- Analyze whether an alternative that incorporates the application of any such heightened conservation measures in the areas of origin would be consistent with CEQA, given that such an alternative would require area-of-origin water users to reduce their water uses to support a Delta Plan whose coequal goals would include enhancing water supplies diverted from the Delta (see Cal. Code Regs., tit. 14, § 15126.6(a) (EIR alternatives must be "potentially feasible"), 15364 ("feasible" considers "legal" factors));
- Acknowledge that Sacramento Valley agricultural water users already reuse diverted water multiple times, which would significantly reduce the amount of "new water" yielded by applying heightened conservation measures in this region relative to other regions of the state; and
- Acknowledge that applying heightened urban conservation measures in this region would have disproportionate economic impacts in this region because: (1) climatic and land use conditions beyond the control of water suppliers in this region result in significantly higher outdoor water demands in this region, which would cause such heightened measures to result in significantly greater economic impacts in this region than in coastal regions; (2) this region's self-reliance exists because communities here are located near sufficient and high quality water sources, which reduces their water costs and makes further water conservation less economically feasible than in regions where populations are located far from their water sources or have higher treatment costs; and (3) SBX7 7 effectively applies much less stringent water conservation standards to other regions of the state through the Option Three 5% conservation option (Water Code § 10608.20(b)(3)), and the exemption for regions using less than 100 gallons per capita per day, both of which are predominantly more dense, cooler regions (Water Code § 10608.22).

Modifications to CVP and SWP Operations and Facilities. The NOP indicates that possible components of the Delta Plan include "modifications to SWP and CVP operations and facilities to become compliant with" the reasonable and prudent alternatives (RPAs) in the U.S. Fish and

Wildlife Service's 2008 biological opinion for Delta smelt and the National Marine Fisheries Service's (NMFS) 2009 biological opinion for, among other species, Chinook salmon and steelhead. (NOP, pp. 18-20.) As an initial matter, the NOP's description of this possible Delta Plan component is too vague to allow for meaningful comment, given that it fails to define what portions of the lengthy RPAs the Delta Council proposes to adopt.

To the extent that the Delta Plan proposes to include those RPAs' Delta flow standards or NMFS's proposal to introduce salmonid species above the Central Valley's rim reservoirs, the Delta Plan EIR must analyze what impacts implementation of those standards and proposals would have on the operations of those reservoirs and what resulting impacts would occur on, among other parameters, deliveries to area-of-origin water suppliers and generation of hydroelectricity at those reservoirs. Reduced deliveries to area-of-origin water suppliers could result in impacts as previously discussed in this letter. Reduced generation of hydroelectricity would result in reduced electrical generation from renewable resources and increased electrical generation at powerplants that rely on fossil fuels, thus increasing air pollution and greenhouse gas emissions.

SWRCB/DFG Streamflow Recommendations. The NOP indicates that the Delta Plan EIR may consider "ecosystem-related flow recommendations prepared by the State Water Resources Control Board and Department of Fish and Game." (NOP, p. 20.) If the Delta Plan EIR considers implementation of those recommendations, then that EIR must consider the following impacts that would occur as a result of implementing those recommendations:

- Significant reductions in cold-water pool storage in reservoirs throughout the Central Valley, resulting in significantly reduced summer/fall streamflows and significantly increased water temperatures in the spawning grounds for salmon and steelhead species listed under the federal Endangered Species Act, including the spawning grounds present in the lower American River, which is designated under the federal Wild and Scenic Rivers Act;
- Significant reductions in the amount of water available for agricultural and municipal use in the area of origin resulting in direct economic impacts, indirect environmental impacts and legal conflicts, as discussed previously in this letter;
- Potential significant shifts, from the summer and fall to the spring and from dry years to wet years, of hydroelectric generation, with potential consequent increased generation at fossil-fuel-driven powerplants during summer months and during dry years and related increases in air pollution and greenhouse gas emissions;
- Increased groundwater pumping, as areas with sufficient and high quality surface water supplies are denied the use of those supplies;
- Potential increased flooding risks associated with increased hydrological head on levees upstream of, and inside, the Delta; and

- Reduced recreational opportunities associated with reservoir-based recreation and, potentially, instream recreation.

Modifications of Upstream Reservoirs and Bypasses. Similar to the NOP's proposal to implement undefined parts of the 2008 and 2009 biological opinions' RPAs, the NOP's proposal to incorporate, into the Delta Plan, "[m]odification of operations of upstream reservoirs or expansions of bypasses" is inconsistent with CEQA because it is too vague to describe the proposed project alternative. (See NOP, p. 22.) To the extent that this proposal would involve any measures that would reduce the amount of water available for agricultural or municipal use in the area of origin, this proposal would have the same environmental impacts and legal problems as the other proposals discussed above that would effect similar reductions in the area of origin. This proposal also could: (1) reduce the generation of hydroelectric power, with the attendant indirect effects on air pollution and greenhouse gas emissions; and (2) increase flooding risks by modifying reservoirs' flood-control operations.

To the extent that the proposed modifications to upstream bypasses would include the frequently discussed proposal to inundate the Yolo Bypass more frequently, the Delta Plan EIR must analyze:

- The risk of increased flooding, and resulting social, economic and environmental damage, in the Sacramento area; and
- The impacts on Yolo County's agricultural economy and potential indirect environmental impacts on waterfowl habitat, giant garter snake habitat, seasonal sloughs, groundwater resources and other environmental resources outside of the Yolo Bypass that have developed in reliance on current levels of agricultural operations in Yolo County.

Financing Plan. The NOP states that the Delta Plan will "[c]onsider a financing plan that could be based on fees and charges to fund implementation of the Delta Plan recommendations and Delta Stewardship Council activities" (NOP, p. 24.) To the extent that any such financing plan would involve fees on diversions within the area of origin, the Delta Plan EIR must consider the potential direct effect of reducing diversions for agricultural and municipal use in that area and the indirect effects associated with such reduced diversions previously discussed in this letter. In addition, if the Delta Plan's proposed financing plan would involve any such diversion fees, then its EIR also would be required to analyze the cumulative impacts on the Sacramento metropolitan region of those diversion fees and the increased wastewater rates and hook-up charges associated with the Sacramento Regional County Sanitation District's compliance with its recently-issued NPDES permit. Those cumulative effects could include intensifying the growth-inducement impacts in other regions of the state and the associated indirect impacts, such as increased demand for sensitive habitats, increased traffic congestion and increased air pollution and greenhouse gas emissions.

Responsible Agencies

The NOP includes numerous agencies located upstream of the Delta – including many members of NCWA and RWA – as “responsible agencies” that would “carry out” some undefined parts of the Delta Plan. Under the Delta Reform Act, however, the Delta Stewardship Council has only very limited and well-defined authority to adopt any Delta Plan elements outside of the Delta. As discussed above, the Council’s authority concerning Delta-watershed water uses consists only of the authority to “promote” certain principles (Water Code §§ 85020, 85303), which does not include the authority to require other agencies to “carry out” those principles. In addition, the Delta Reform Act states that the scope of the Delta Plan’s “ecosystem projects and programs . . . shall be the Delta,” but only states that the Plan “may include recommended ecosystem projects outside of the Delta” (Water Code § 85302(b) (emphasis added).) The fact that the Council may recommend such projects would not require other agencies to carry them out. The Delta Plan EIR therefore should not identify agencies in the Delta watershed as “responsible agencies” that would “carry out” parts of the Delta Plan.

In particular, the Delta Plan must not identify agencies that have CVP and SWP settlement contracts as responsible agencies. Those agencies have contracts with the CVP or the SWP only because the federal or state government needed to resolve water-right disputes with those agencies in order to operate the CVP and the SWP for the benefit of other areas of the state. The mere fact that those agencies have such contracts with the federal or state government should not subject their activities to the Delta Plan.

Coordination Among State Agencies

Notwithstanding the NOP’s length, it gives little attention to one of the fundamental reasons why the Council was created, namely to coordinate the activities of other state agencies involved in issues related to the Delta. The Delta Vision Strategic Plan identified the problem that eventually led to the Council’s creation as follows:

The current governance of water and the Delta includes more than 200 federal, state and local government agencies! . . . All those who testified about Delta governance said a change had to be made . . . The Task Force . . . recommends a Governor-appointed, State Senate-confirmed public body representing a statewide perspective (Delta Vision Strategic Plan, p. 7.)

To maximize its effectiveness, the Delta Plan should identify those instances where different state agencies are pursuing their policy goals in a way that may hamper implementation of the coequal goals by the state as a whole. A prime recent example of this sort of situation is the Delta Watermaster’s issuance of an agricultural efficiency white paper suggesting increased adversarial enforcement, while DWR is developing agricultural water management standards under SBX7 7 through cooperative processes. In such a circumstance, it becomes very difficult for stakeholders to determine whether voluntary discussions with a state agency have any particular value.

Conclusion

Once again, NCWA and RWA appreciate the opportunity to comment on the Delta Plan NOP. We look forward to reviewing the Council's proposed Delta Plan.

Very truly yours,

NORTHERN CALIFORNIA WATER
ASSOCIATION

By: 

David Guy
President

REGIONAL WATER AUTHORITY

By: 

John Woodling
Executive Director